

## Memorandum of Understanding between

## Hong Kong Monetary Authority and Financial Reporting Council

### Purpose

1. This Memorandum of Understanding (“MoU”) is a statement of intent setting out the framework agreed between the Hong Kong Monetary Authority (“HKMA”) and the Financial Reporting Council (“FRC”) (each referred to as a “party”, together as “parties”), regarding the co-operation and communication pursuant to investigations and enquiries conducted by the FRC under the Financial Reporting Council Ordinance (Cap. 588) (“FRCO”) that relate to authorized institutions (“AIs”) as well as the exchange of information between the parties.

### Definition of Terms

2. Unless otherwise specified, terms defined in the Banking Ordinance (Cap. 155) (“BO”) and the FRCO bear the same meaning when used in this MoU.

### Principles

3. This MoU recognises the following principles:

- (a) the HKMA and the FRC will use their best endeavours to meet the terms of this MoU;
- (b) to the extent permitted by applicable law, each of the HKMA and the FRC will make reasonable efforts to ensure that the other party is provided with all relevant information so that the other party may effectively perform its statutory functions;
- (c) this MoU does not modify or supersede any law or regulation;
- (d) this MoU does not detract from the respective statutory functions of the parties under the BO and FRCO;
- (e) this MoU does not amount to a delegation of any of the powers, duties and obligations of the parties;
- (f) this MoU does not create, directly or indirectly, any rights, obligations or liabilities, enforceable by the parties or any third party; and

- (g) this MoU does not affect any arrangements under any other MoU that either party has entered into or may enter into with any other party.

#### Scope

4. The key functions of the FRC under the FRCO are to investigate into auditing and reporting irregularities in relation to listed entities and to enquire into non-compliances with accounting requirements in relation to listed entities.

5. Under the FRCO, the FRC shall give written notice to the HKMA when initiating an investigation or enquiry if the listed entity in question is an AI, or to the FRC's knowledge, is a controller of an AI or has as its controller an AI or has a controller that is also a controller of an AI. Where applicable, the relevant investigator or enquirer shall first consult the HKMA before imposing a requirement on a person under section 25, 26, 28 or 43(1) of the FRCO (as the case may be).

6. This MoU sets out the arrangements for effecting the above notification and consultation. It also serves to establish the channels and mechanism for the exchange of information between the parties where appropriate.

#### Notification and Consultation

7. Where the FRC initiates an investigation or an enquiry in relation to a listed entity which is an AI, or to the FRC's knowledge, is a controller of an AI or has as its controller an AI or has a controller that is also a controller of an AI, the FRC shall notify the HKMA in writing under the FRCO as soon as is practicable. The written notice will set out the listed entity in question, the AI concerned if the AI is not the listed entity in question, a brief narrative of the circumstances supporting the FRC's view to initiate investigation or enquiry (as the case may be), and the powers that are exercisable by the investigator or enquirer (as the case may be).

8. The written notice can be delivered by hand, post or facsimile transmission, or via electronic mail transmission to the designated principal contacts at the HKMA (see Annex). If circumstances warrant, the FRC will also give oral notice to the HKMA prior to the giving of written notification.

9. If an investigator directed, or enquirer appointed, by the FRC to conduct an investigation or enquiry (as the case may be) is minded to exercise the relevant powers under the FRCO and where the circumstances require prior consultation with the HKMA, the investigator or enquirer (as the case may be) will conduct the consultation as soon as is practicable. The need for consultation will first be conveyed to the designated principal contacts at the HKMA, and the parties will discuss the detailed arrangements.

10. Consultation can be effected through meeting or by exchange of letters or both. Any key issue discussed and matter agreed at a meeting will be documented for the parties' record.

11. Upon the HKMA having been given the required written notice, and (if applicable) been consulted with, in respect of an investigation or enquiry, the FRC and the HKMA may discuss, as necessary, the channels and mechanism for the on-going communication between the parties including, in particular, the relevant investigator or enquirer during the course of such investigation or enquiry.

#### Exchange of Information

12. Pursuant to section 120(5)(f) of the BO, the HKMA may disclose information to the FRC where, in the opinion of the HKMA: -

- (a) it is desirable or expedient that information should be so disclosed in the interests of depositors or potential depositors or the public interest; or
- (b) such disclosure will enable or assist the FRC to exercise its functions and it is not contrary to the interests of depositors or potential depositors or the public interest that the information should be so disclosed.

13. Pursuant to section 51(3)(b) of the FRCO, the FRC may disclose information to the HKMA where, in the opinion of the FRC: -

- (a) the disclosure will enable or assist the HKMA to perform its functions; and
- (b) it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

14. Information exchange between the parties will be made between the designated principal contacts of the parties (see Annex) as and when necessary.

#### Confidentiality and Use of Information

15. Information exchanged between the parties under this MoU will only be used by the recipient for the purposes of performing its statutory functions. Such information will not be disclosed to any third party without the prior consent of the party providing the information, unless the disclosure is required by law. To the extent allowed by law, the recipient being so required by law to disclose any such information will inform the other party about the situation as soon as is practicable.

16. Each party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of information received from the other party under this MoU.

#### Amendments

17. Either party may at any time request the other party to agree to amend this MoU, or may invite consultation with the other party regarding the need for any amendment. Any such amendment takes effect only by written agreement of the parties.

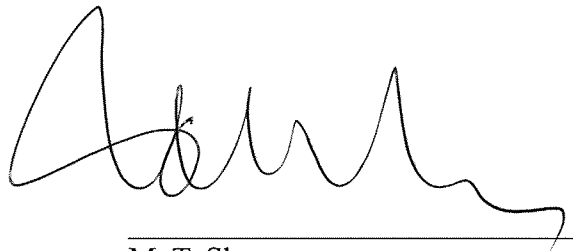
18. Either party may at any time make any change to the contact details of the designated principal contacts of such party or to its designated principal contacts (see Annex). Any such change may take effect by verbal communication to the other party, which may be confirmed subsequently in writing to that other party.

HONG KONG MONETARY AUTHORITY      FINANCIAL REPORTING COUNCIL



Y. K. Choi  
Deputy Chief Executive

19 November 2007



M. T. Shum  
Chief Executive Officer

19 November 2007

Annex

Designated Principal Contacts

The designated principal contacts for the communication and exchange of information between the parties as set out in this MoU are as follows:

HKMA 55/F, Two International Finance Centre, 8 Finance Street, Central, Hong Kong	FRC 29/F, Queensway Government Offices, High Block, 66 Queensway, Hong Kong
Mr Arthur Yuen Executive Director (Banking Supervision)  Tel : 2878 1982 Fax : 2878 1670 Email : arthur_kh_yuen@hkma.gov.hk	Mr M.T. Shum Chief Executive Officer  Tel : 2236 6001 Fax : 2810 6320 Email : mtshum@frc.org.hk
Mr Danny Leung Division Head, Banking Supervision  Tel : 2878 8202 Fax : 2878 7127 Email : danny_sy_leung@hkma.gov.hk	Ms Clara Yu Director  Tel : 2236 6011 Fax : 2810 6320 Email : clara.yu@frc.org.hk